

Calaveras Superior Court
Civil Law & Motion Calendar Tentative Rulings
Friday, February 7, 2020
Hon. David M. Sanders, Courtroom #2

9:00 AM 18CV43485 Petnr's Motion to Compel Further Responses for Form Interrogatories 08/13/2018 03/11/2020 Case Management Conference
& Def's Motion to Transfer and Consolidate Actions

Ptff/Pet: 3NT Management; Bordon, Craig; Genesis PVB

Atty:

Def/Res: George 7820; Grafer, Raquel; Polkinghorne, Adam; Power, Eugene; Raquel 1331; Two
Grafers Management

Atty: Hanson Bridgett LLP

Tentative Ruling on Petnr's Motion to Compel Further Responses for Form Interrogatories:

On May 8, 2019, plaintiff Craig Bordon propounded discovery on defendant George Grafer to include Form Interrogatories, Set One, with responses due by June 12, 2019. Plaintiff granted numerous extensions until September 4, 2019. On September 4, 2019, plaintiff received a courtesy copy of defendant's responses that were not substantive. On October 24, 2019, plaintiff timely filed the Motion to Compel.

Plaintiff failed to comply with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the necessary language in the Notice of Motion and Motion to Compel Further Responses to Form Interrogatories and Request for Sanctions regarding the Court's tentative ruling system, which under the rule may be a basis to deny a motion. However, in the interests of justice, the court declines to rule solely on that procedural deficiency and the Court will address the merits of the plaintiff's motion.

Defendant failed to provide appropriate objections to plaintiff's Form Interrogatories, Set One, and specifically, Interrogatory Nos. 12.1., 14.1, 17.1 (pertaining to Request for Admission Set One, Request Nos. 6, 8, 22, 29-30, 32-36, 41-43, 46-53, 56-57, 69-71, 73, 77-89, 94-96, 102, 104 and 107) and Form Interrogatory Nos. 50.1 through 50.6.

Defendant alleges the Form Interrogatories were not properly served. However, defendant did provide responses that were inadequate therefore making the issue of service moot. Defendant further claims the number of requests made by plaintiff were "spiteful and with intent to imburden and punish defendants with overbroad and largely repetitive requests." Defendant did not state an objection to the form interrogatories and therefore any objection is waived.

Defendant's claim that he should not be required to provide further responses to the form interrogatories until such time that plaintiff properly responds to his deposition notice is without merit. Defendant is ordered to provide further written answer, without objection to plaintiff's Form Interrogatories, Set One, and specifically, Interrogatory Nos. 12.1., 14.1, 17.1 (pertaining to Request for Admission Set One, Request Nos. 6, 8, 22, 29-30, 32-36, 41-43, 46-53, 56-57, 69-71, 73, 77-89, 94-96, 102, 104 and 107) and Form Interrogatory Nos. 50.1 through 50.6, by March 9, 2020.

Plaintiff also request sanctions for \$7511. "The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts support in the amount of any monetary sanction sought." CCP §2023.040 Plaintiff has complied with the requirements and therefore plaintiff's motion for sanctions is GRANTED in the amount of \$3060 comprised of 10 hours at \$300 an hour (the standard going rate in this community) and \$60 filing fee.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted proposed Order in compliance with this ruling.

Tentative Ruling on Def's Motion to Transfer and Consolidate Actions:

On August 13, 2018, plaintiffs filed the Complaint. On November 16, 2018, plaintiffs filed an action in Marin County Superior Court, Case No. CIV1804164. On December 20, 2019, defendants filed this motion to transfer and consolidate cases.

Defendants failed to comply with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the necessary language in the Notice of Motion and Motion to Transfer and Consolidate Actions regarding the Court's tentative ruling system, which under the rule may be a basis to deny a motion. However, in the interests of justice, the Court declines

to rule solely on that procedural deficiency and the Court will address the merits of defendants' motion.

Code of Civil Procedure section 403 allows a judge, on motion, to transfer an action from another court to that judge's court for coordination with an action involving common questions of fact or law. Both cases arise from the parties' now defunct business deal for the cultivation of cannabis on more than 477 acres of property in Calaveras County.

Consolidation is appropriate when there are common issues of fact and overlapping issues of law. Based on the foregoing, defendants' motion for consolidation is GRANTED, in light of the lack of opposition from plaintiffs. Calaveras Case Number 18CV43485 will be the primary case number.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants shall prepare the formal order pursuant to Rule of Court 3.1312. Defendants shall bear the cost of transferring the Marin County case to this court.

9:00 AM 19CV44360 Demurrer / Motion to Strike

10/04/2019

Ptff/Pet: Warner, Patrick T.

Atty: Pro Se

Def/Res: Live Action Motorsports LLC; Saia, Michael Thomas

Atty:

Tentative Ruling: On October 4, 2019, plaintiff filed the Complaint. On December 27, 2019, defendants timely Demurred and concurrently filed a Motion to Strike.

Defendants' general demurrer to the first cause of action for breach of contract, the second cause of action for fraud, and the third cause of action for conversion is SUSTAINED with ten (10) days to amend. A written contract may be pleaded either by its terms – set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated by reference – or by its legal effect, i.e., by alleging the substance of its relevant terms. *Construction Protective Servs., Inc. v TIG Specialty Ins. Co.* (2002) 29 CA4th 972, 993. Plaintiff has not sufficiently pled all terms of the contract and has not attached a copy of the contract to the underlying complaint.

Furthermore, when the defendant is a corporation, the plaintiff must also allege the names of the persons who made the representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. *Kalnoki v First Am. Trustee Servicing Solutions, LLC*, (2017) 8 CA5th 23, 35. Plaintiff has not sufficiently differentiated among the named defendants as to which specific acts are alleged as to which specific defendant, including detailing the alleged relationship between Michael Saia and Live Action Motorsports, LLC.

Fraud allegations must be pleaded with more detail than other causes of action. *Heritage Pac. Fin., LLC v Monroy* (2013) 215 CA4th 972, 989. The facts constituting the fraud, including every element of the cause of action, must be alleged factually and specifically.

Defendants' demurrer to the fourth cause of action for negligent interference with prospective economic advantage and the fifth cause of action for intentional interference with prospective economic advantage is SUSTAINED with (10) days to amend. Plaintiff has not sufficiently pled all necessary elements for the causes of action including the alleged existence of a contract with a third party and any evidence that defendants knew of said alleged contract.

Defendants' demurrer to the sixth cause of action for unfair business practices is SUSTAINED with (10) days to amend, as plaintiff has not alleged sufficient failures of the defendants for a claim of "unfair", "unlawful", or "fraudulent" business acts or practices.

The Court will not rule on defendants' special demurrers and motion to strike as they are moot since defendants' general demurrer has been sustained as to all counts of action.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.